

Subject: Comment to Proposed Amendments to MCR Subchapter 7.100 - ADM File No. 2010-19

8/17/2011

Good morning,

We have reviewed the proposed amendments to Subchapter 7.100 of the Michigan Court Rules currently out for comment until October 1, 2011 (ADM File No. 2010-19). In several of the proposed rules, the triggering event for the stated deadline is ambiguous. We propose that these triggering events be clarified in the final version of the rules.

MCR 7.104(D)(2), 7.104(E)(5) and 7.105(B)(5)(g) all refer to a 7-day deadline to file the certificate of the court reporter or recorder. Rule 7.104(D)(2) says that the appellant shall file with the claim of appeal “a copy of the certificate of the court reporter or recorder or a statement that the transcript has been ordered, in which case the certificate of the court reporter or recorder must be filed within 7 days.” [Emphasis added.] Rule 7.104(E)(5) says that the appellant must serve “the certificate of the court reporter or recorder or a statement that the transcript has been ordered and payment for it made or secured” and that, “[i]f a statement is filed, the certificate of the court reporter or recorder must be filed within 7 days.” [Emphasis added.] Rule 7.105(B)(5)(g) says that if a transcript is not yet available for filing, “the appellant must file a copy of the certificate of the court reporter or recorder or a statement that a transcript has been ordered, in which case the certificate of the court reporter or recorder must be filed within 7 days.” [Emphasis added.]

Based on Rule 7.109(B)(3)(a), which provides that the court reporter or recorder must furnish a certificate “within 7 days after a transcript is ordered by a party or the court,” it seems that the Court may have intended that the above 7-day deadlines be triggered by the date of the transcript order. However, one also may interpret these Rules as triggering the 7-day deadline from the date of filing/service of the statement that the transcript has been ordered, or possibly from the date of the statement itself.

Similarly, Rule 7.108(B)(4)(b) says, “Objections shall be filed and served within 7 days.” [Emphasis added.] It is not clear whether the 7 days are triggered by the service of the notice of bond (see Rule 7.108(B)(4)(a)), receipt of the notice of bond, or some other event.

Rules 7.109(B)(3)(b)(i)[A], [B] and [C] state deadlines for the court reporter or recorder to file the transcript in various types of cases. These deadlines are stated as within 14 days, 28 days and 56 days, respectively. None of the Rules indicate a triggering event for the time period stated.

Rule 7.113(A)(1) provides, “If the appellant fails to pursue the appeal in conformity with the court rules, the circuit court will notify the parties that the appeal shall be dismissed unless the deficiency is remedied within 14 days.” [Emphasis added.] Once again, no triggering event for the 14-days is specified. Is it 14 days from the court notice? Or perhaps it is 14 days from service of the notice?

Finally, the Rules at the end of Subchapter 7.100 set out deadlines for appeals from various agencies and boards. In many of them, such as Rule 7.119(B)(3), appellees are required “to file an appearance within 14 days that complies with MCR 7.104(F).” [Emphasis added.] It is ambiguous as to what event triggers the 14 days. Rule 7.104(F) indicates that the appearance must be filed within 14 days after service of the claim of appeal. However, it is not clear whether this same triggering event was intended. Based on earlier paragraphs, one also may interpret the deadline as being triggered within 14 days of the filing of the claim of appeal.

This lack of clarity as to the triggering events for the above deadlines will likely create uncertainty for practitioners before the Michigan Circuit Court. To avoid this potential confusion, we respectfully request that the Court specify with particularity the triggering event for each of the deadlines.

Sincerely,

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